

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-138490-15

Date:

May 26, 2016

### Legend

Taxpayer =

Shareholder =

Individual A =

Individual B =

Law Firm =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter dated November 20, 2015, supplemented by a letter dated April 26, 2016, submitted by Accounting Firm requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC") for Taxpayer's first taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Accounting Firm and accompanied by a penalty of perjury statement executed by Individual A. This office has not verified any of the information submitted in support of the request for ruling. It is subject to verification on examination.

## **FACTS**

Taxpayer is a domestic corporation wholly owned by Shareholder, an S corporation. Taxpayer was formed on Date 1 to serve as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer operates under a commission arrangement with Shareholder.

Individuals A and B own Shareholder, each through their own limited liability company that is disregarded as an entity separate from its owner for federal tax purposes.

Shortly before Date 1, Shareholder and Individuals A and B decided to establish an IC-DISC. They engaged Law Firm to organize Taxpayer as a corporation. They engaged and relied on Accounting Firm to prepare the necessary election, that is, Form 4876-A, to qualify Taxpayer as an IC-DISC. Law Firm incorporated Taxpayer on Date 1. Upon formation, Taxpayer operated as an IC-DISC.

On Date 2, about a month later, Accounting Firm prepared Form 4876-A to take effect as of Date 1, and mailed it to Taxpayer with instructions to sign it and file it promptly with the Service. This correspondence never reached Taxpayer. Consequently, the form was not filed with the Service. Mistakenly believing that the form had simply been received and filed, Accounting Firm did not contact Taxpayer about it again.

The next year, on or around Date 3, Taxpayer's first federal income tax return was timely filed using Form 1120-IC-DISC. Shortly after filing the return, Taxpayer received a letter from the Service stating that the return could not be processed because there was no record of Taxpayer having filed Form 4876-A. Having thus learned of a problem, Taxpayer contacted Accounting Firm, and the earlier miscommunication was discovered.

Upon Accounting Firm's advice and with its assistance, Taxpayer requested a ruling granting an extension of time to file Form 4876-A for its first taxable year, in order to be treated as an IC-DISC beginning on Date 1.

## **LAW AND ANALYSIS**

Section 992(b)(1)(A) of the Internal Revenue Code (the "Code") provides that an election by a corporation to be treated as a DISC<sup>1</sup> shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

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<sup>1</sup> As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

Section 992(b)(1)(B) of the Code provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided

herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Pursuant to a Power of Attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representative.

Sincerely,

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Marissa Rensen  
Senior Counsel  
Office of Associate Chief Counsel (International)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes